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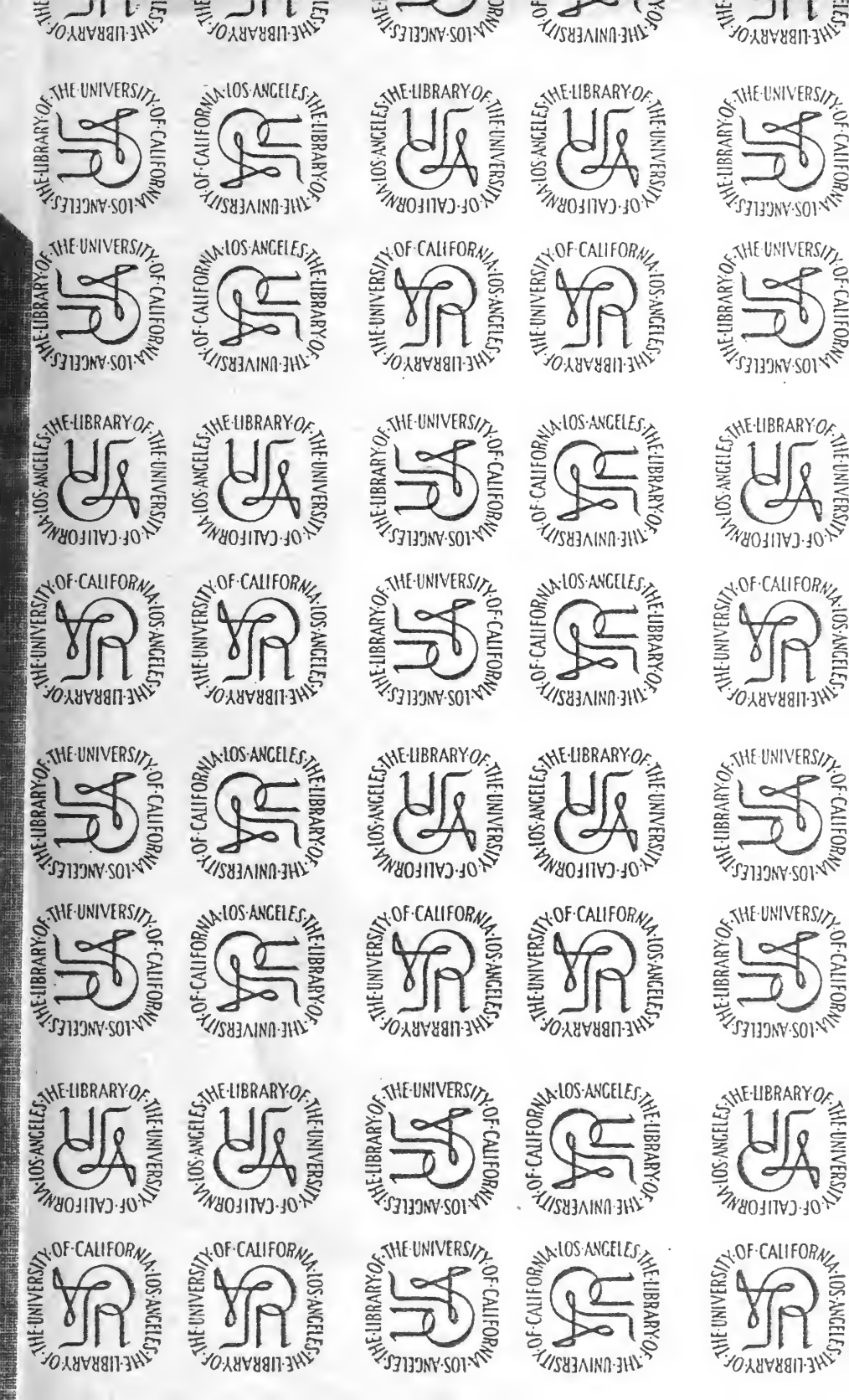
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BERNHARD L. DEUTSCH,

Born at Kanitz, Austria.
January 2, 1819.

Died there March 18, 1890.



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THEORY OF ORAL TRADITION

BY GOTTHARD G. DEUTSCH, PH. D.

*As read before the Central Conference of American Rabbis,
at its Seventh Annual Convocation,
at Milwaukee, Wis.
July, 1896.*



לכבוד אבי מלמדי לחזקת אשר מעודי הנחני בדרך האמת

מו"ה יששכר המכונה בער ז"ל

בן חזר אליעזר בן מר"ה יקותיאל ואב חמס' זלמן וואלף בן
הדיין מר"ה מנחם מנדל בן מר"ה יוסף בן הרב מר"ה אליעזר
בעל ס' שיה עבדי אבות אשר שמש במדרשו של ר' שמשון
ז"ה בחי' ושב היתה מנוחתו כבוד א' דחמס' תפ"ט לפ"ק

נולד בש"ק ה' טבת תקע"ט לפ"ק
ויאסף אל עמיו בליל ד' כ"ז אדר תר"ץ לפ"ק

הקדשתי את הספר הזה למנוחת תורה מזכרת אהבת אהבת
עולם

אביב

The Theory of Oral Tradition.

BY GOTTHARD DEUTSCH, PH. D.

Professor of History at Hebrew Union College.

INTRODUCTION.

In my paper on the Scroll of the Law, presented last year to the Central Conference of American Rabbis, I stated my opinion on the purpose of such essays as this. It is not my belief that such investigations shall be regarded as decisions, but they shall from a historical point of view investigate topics which are of immediate practical interest. They shall serve as a guide to the rabbi who wishes to form an opinion of his own on such questions as may be urged upon him to decide. A vote on a subject which is a matter of conscience will never ultimately settle the question. It will, as the history of all religions teaches, sooner tend to dissensions than to harmony. A unity of action is desirable for the sake of proper organization, a unity of thought in all details is an impossibility. Judaism is broad enough to embrace a wide range of different opinions, and we, in tolerating such differences, stand on the historic basis of Judaism, which in the second century proclaimed the fundamental principle that no man shall insist on his opinions, for the fathers of the world did not insist on their opinions.* A scientific investigation of a law does not necessarily imply that the practice must accept the results of the investigation. Practice is guided by existing conditions; science knows of no other law than truth. We must further be mindful of the fundamental idea of the reform movement, which Geiger in his recently published letters† has set

*Edujoth I, 4.

†Allg. Ztg. d. Judt. 1896, p. 80b.

forth with a distinctness that is really marvelous in so young a man as he was at that time. We stand on historic grounds. That which history has made Jewish, commands our respect, and shall not be disregarded, provided it is not a dead weight on the present generation or does not more evil than it does good. An evidence brought from traditional sources can neither confirm nor deny that which becomes a practical necessity. David Ha-levi, the celebrated author of *Ture Zahab*, is undoubtedly an authority for the law that demands of every Jew to keep his head covered, and brands the uncovered head as "Chuzpa," while Elijah Wilna, the "Gaon" looks upon it "only" as a violation of the moral law **מַצֵּד הַמוֹסֵר**.* Rabbi Loewe ben Bezalel is authority for the statement that by the acceptance of the Copermican system one ceases to be a Jew.† Joseph Caro is outspoken on the question of modern literature in the pulpit, for to read a novel is to him identical with the worship of idols.‡ Rabbi Jose, the leading scholar of the fourth century is authority for the necessity of keeping two holidays,§ and Rabbi Jehuda in the second century makes it our duty to read every week the traditional portion of the Thora.||

Belief in authority leaves no alternative. Either you accept it or you place yourself outside of the religious community. Belief in the binding power of old authorities, and consequently in the unchangeableness of the law is not so undoubtedly Jewish as it seems. True it is that under the influence of Pauline radicalism, R. Joshua in the beginning of the second century declared that the prophet Elijah, i. e., the Messiah, would never alter one law,** and this view is by its author proclaimed as a fundamental doctrine of Judaism, handed down from generation to generation since the time of Moses. It must also be admitted that previous to the rise of Christianity, Judaism taught that not a jot of the Law should ever

Ture Zahab* Orach Chajim 8, 3 and **בִּיאורֵי הַנִּזְכָּר *ib.*

†In **באר הגולה** fol. 38. c; 42, d. Zunz in his biography of Azariah dei Rossi in **מצרף לכסף** Wilna, 1865, p. 9.

‡Orach Chajim 307, 16.

§Jer. Erubin Ch. III. Grætz Gesch. Bd. IV, p. 457.

||Megilla 31b.

**Edujoth 8, 7 cp.

perish,* and that heaven and earth would pass away but the Law should never pass away.† However, practical necessity was stronger than the letter of the Law. The strict observance of the Sabbath had during the Maccabean war become an impossibility, and therefore it was decided that even on the Sabbath it was lawful to defend one's life. Theory came afterwards to justify what practice had made lawful before. The school of Shammai found that the words "Thou shalt make bulwarks against the city until it fall" justified a continuation of warfare on the Sabbath.‡

Rabbi Simeon ben Menassja says in a general way that Sabbath is given to man.§

From such an occasional breaking of the Law it was only one step to the declaration of the principle that scripture left the interpretation of the Law to the rabbis of each generation.||

It is said also that every court or Synhedrin had the same authority which was vested in Moses and Aaron,** and that if the rabbis say that which is right, is left, thou shalt not depart from their words.†† As practice has produced theory, so practical reasons had the effect of limiting the theory. Had for instance the Maccabean revolution and the edicts of Hadrian made the strict observance of the Sabbath impossible, then followed theory and proved the right of a war of defense from the words "until it fall," and the right to violate the Sabbath if it was necessary for the preservation of life

עולם Exod. Rabba Ch. VI ep. Matthew V, 17-20.

†Tanchuma ad Gen 42, 1 ep. Matthew 5, 18 and Luke 16, 17.

‡אפילו בשבת Siphre ad Deut. XX-20 ed, Friedmann p. 111b ep. I Makk. 3, 41: Jos. Antiquities XII, 3, 40-41, also Sabbath 60a which Graetz III p. 152 referred to the Hadrianic period, although the parallel passage in Josephus should have proven to him the falsehood of this view.

§Mekilatha Ex. 31, 14 ed Friedm. p. 104a.

||לא מסרין הכתוב אלא לחכמים Chagiga, 18a, and parallel passages.

**Rosh Hash 25b.

††Siphre, Deut. 17, 11. Malbim, the apölogete of rabbinical exegesis, understands this as subjective only: If you se. wrongly think that the rabbis teach right is left למיין שמאל יתדמה שמהפכין שמאל לימין Com. on Deut., Warsaw 1880, p. 235.

from the words "holy unto you."* But as soon as this principle was generalized, theory limited it, saying that only in calendation the rabbis had absolute power, but not in the observation of the Sabbath-rest. This vacillation between the theoretical acceptance of authority and the practical self-emancipation from it, we find throughout Jewish history, as throughout history in general. Rabban Gamaliel, who preached and practiced liberal Pharisaism opposing Christianity† on one side and strict rigorism on the other, interpreted the Law more according to its spirit than according to its letter. He prayed on the day of his marriage, although tradition was against it, because a bridegroom was not supposed to be in a sufficiently calm state of mind to approach God. But R. Gamaliel had a higher view of prayer. It to him was not the performance of a duty regulated by a code of ceremonies; it was the acknowledgment of the Kingdom of Heaven, of God's ruling over the world, and so he prayed,‡ but, when R. Gamaliel had died, his son and successor, R. Simeon, limited this liberal interpretation. "My father," he said, "stood above the common level. What he would permit himself not everybody has a right to do."§

I. CONSCIOUS OPPOSITION TO THE LAW.

The practice disregarded law even in Talmudic times and the theory found an excuse for it by pointing to the verse in Psalms, The Lord preserveth the simple.¶ In a number of instances the authority of tradition was refuted by the statement that this tradition

*Ex. 31, 14.

†Rabban Gamaliel's opposition to Christianity is sufficiently proven by the legend that makes him ridicule the inconsistency of the Christian view in regard to the obligatory character of the law, (Sabb. 116a) also by the fact that he excommunicated R. Eliezer, the leader of Judæo-Christianity (Baba Mezia 59b) and that he was opposed to all Greek translations of the Bible (Sabbath 115a), not as Zunz, Gottsd. Vortr p. 65 supposes Aramaic, because they were interpolated by Christians, cp. Hilgenfeld; Die alttest. Citate Justin's in Zeller theol. Jahrb. 1850, p. 390.

‡Berakhoth 16a.

§ib. 16b.

¶Ps. 116, 6, Sabb. 129c Aboda Zara 30b, Nidda 31a; 45b (and parallel passages); Tosefta Nidda Ch. 2, ed. Zuckermannel p. 643.

was not genuine. So without any authority it is said that a Barajtha quoted by Raphrem is apocryphal* or that a law passing under the authority of Mar, the son of Rabina, was not authenticated by his signature.†

Even the Geonim in spite of their strict adherence to authority occasionally departed from the rabbinical law. To them not only the Talmudic Haggada was authoritative, which as Rab Haj complains was disregarded by those who had studied the philosophical works of the Greeks,‡ but even every popular custom of heathenish origin had to be strictly observed on the supposition "that our ancestors have not without sufficient cause accepted it.§ So they limited the time of twelve months set by the Talmud for the granting of a divorce to a woman who refuses to live with her husband ||מורדת and granted the divorce right away because she might bring her case before the courts.**

Against the clear law of the Mishna which gives to the children the right to inherit their mother's dowry ††כתובת בנין דיכרין the Geonim decided that the husband had unlimited rights to dispose of the wife's property because as they said, the law originally was made to induce the father to give his daughter a dowry; while in the times of the Geonim Jewish fathers gave attention to the daughters to the detriment of the sons.†† While according to the Talmud§§ the chattels which form part of an estate are exempt from being foreclosed by creditors, the Geonim simply abolished this law, because in their times the Jews were not any more real-estate owners,

*Kerithoth 14a ברותא, apocryphal or ברותא fictitious, s. Isaiah Pick's Notes to Pes. 11a.

†Jebamoth 22a this is the interpretation of Jechiel Heilprin, in סדר הדרור ed. Warsaw 1882; vol. II, p. 268.

‡In En Jacob Chagiga 14b, as instance of the literal belief in Haggada, cp. Reßsp. of Geonim, ed. Lyck, No. 16, 28.

§Resp. ed. Lyck No. 14, Weiss, Gesch. d. j. Trad. III, 176.

||Kethuboth 63a.

**Shaare Zedek 4, 4, 15.

††Kethuboth 52b.

‡‡Shaare Zedek 4, 4, 17.

§§Kethuboth 92a.

and to maintain the law would have meant a serious injury to legitimate interests.*

Isaac Alfasi speaks of a decision of the Geonim as an error based on a false interpretation of the Talmud **לֹא דִקְוֹ בְּשִׁמְעָתָא** †, and Maimonides says in regard to a law of the Geonim that it is a serious error **טעות גדולה** †. It is well known that Maimonides himself did not escape severe criticism, and that Abraham ben David's critical notes on Maimonides' code are full of strong invectives which overstep the lines of common decency, ‡ that his rationalistic views on prophecy on resurrection and the Messianic kingdom are subjected to severe criticism chiefly by the French and partly by the Spanish rabbis of the 13th century. § It is more interesting however that in regard to a ritual law later rabbis dared to speak of Maimonides' opinion as an error, and that Abraham Danziger, a man whom we may term a typical expounder of 19th century Neo-Orthodoxy dared say of Maimonides that his view was erroneous. || Considering the little esteem in which during the 12th and 13th century the French and German Rabbis were held by their Spanish brethren, ** it is interesting to note that the former retaliated and that R. Jacob Tam protested against an opinion imputed to him saying: "I never thought of such a thing but the Spaniards said so," †† implying that this mere fact sufficed to dispose of the opinion as worthless. R. Asher b. Jehiel an orthodox authority, a man who thanked God that he never had an opportunity to study anything except Bible

*Shaare Zedek 3, 65. See on the deviations from Talmudic law by the Geonim the exhaustive chapter in Weiss. Gesch. d. jued. Trad. IV. 203, ff.

†See the quotations in Weiss IV, 202, Note 2.

‡Tshubah III. 7, he calls Maimonides a heretic. Other passages Weiss IV. 300. f.

§Nachmani in **אגרת קנאות** p. 8 in Resp. Maim. Leipzig 1859 speaks of all French Rabbis as M. s opponents.

||Chokmath Adam Ch. 107, 12.; Abraham Danziger, died 1820 as member of the rabbinical board of Wilna.

Maimonides never mentions Rashi, and in a letter, which, although of doubtful origin, is the work of an early Spanish writer, contemptuously speaks of the **צרפתים.

††Sefer ha-Jashar 347.

and Talmud,* had found an excuse for the neglect of the rabbinical law that makes it a duty to wash the hands after meal before grace.† although the Talmud derives this law from the Bible,‡ and Isaac Alfassi had refuted all attempts to rationalize on it.§ In this case R. Asher has simply followed the common principle of which we spoke in the beginning, viz, to establish a theory, in order to justify the existing practice. But in a number of other instances he declares very boldly that in questions which are not decided by the Talmud every rabbi is at liberty to decide for himself, even against a clear statement of the Geonim,|| and that the Talmudic law that prohibits all changes of the traditional prayer cannot apply to the prayers made by the Geonim.**

Even R. S. B. A., who is typical for such a strict belief in authority that he, even after he disproved Nachmanides' opinion, would disclaim any authoritative value of his own view,†† says in regard to an opinion of R. Jonathan Ha-Cohen of Lunel: "I am not responsible for his statements."†††

It would be impossible to give a complete series of evidences of this liberal spirit that makes man rebel against authority, that made a Luther say, he would go to Worms, and if every tile on the roofs were a devil. It also is unnecessary, the cited instances suffice to prove, that in spite of the prevailing tendency in Judaism to accept everything that claimed to be tradition, we find ample evidence of a struggle for emancipation from the bonds of ecclesiastic auth-

*Resp. Asheri No. 55, 10, b see Graetz, VII. 234, note 4.

‡מה שלא נהגו האידינא במים in his Hilkhot Berakhoth, fol. 53b אחרונים-לפי שאין מלה סדומית מצוי אצלנו

‡Lev. 11, 44 and 20, 7 the verse is misquoted in the Talmud, see Lipmann Hellers's commentary on R. Asher ad locum. Berak. 53b, cp. Chullin 106a; Joma 83b, where it is quoted as a Mishna.

§Alfassi Chullin 106a.

||ad Syn. 33a, ag. the view of Zerahya halevi, clearer still in his Resp. 55, 9 אין מחניפין לאדם גדול בתורה

**Berakhoth Perek I. These and similar passages in Weiss. Gesch. d. jued. Tr. V. p. 63 ff.

††למעשהה In Torath ha bajith he-arukh I. 1.

††Resp. I. 128. אין אנו אחראין להרב

ority. And therefore we shall cite only a few more instances from more recent times, because with the close of the 15th century criticism was almost unknown to the Jews. The authorities quoted are selected just from amongst those who are regarded typical for their strict adherence to traditionalism.

Moses Isserls a well-known rigorist, says in spite of older authorities quoted by himself that occasionally one may devote his time to scientific studies,* although the silence of R. Joseph Karo and the explicit testimony of others are against the toleration of studies other than talmudic.

David Halevi, author of *טורי זהב*, another rigorist, has the boldness to assert that Joel Særkes, his father-in-law, whom he otherwise holds in high esteem, as well as R. Joseph Karo, gave not the due attention to a certain question of the ritual *לֹא יֵצְאוּ יְדֵי חֻבַּת הָעֵינָן בֹּהַ* what means that their decision is based on an erroneous interpretation of the Talmud. The same rabbi also rejects an opinion of Maimonides in ritual law,† and in this instance he is upheld by one of the strictest believers in authority, by Abraham Danziger, who, however refrains from mentioning Maimonides' name, saying: "Take care to understand this principle for one of our great writers has committed an error in this case."§

*Jair Chajim Bacharach, one of the more enlightened rabbis of the seventeenth century, has preserved us a case which is highly significant for the fact that in spite of all adherence to authority, it is by practical considerations that the interpreters of religious law are guided. A man had trespassed upon the ritual law drinking wine with non-Jews, and the rabbi of the community had refused to proceed against the sinner with disciplinary measures because he feared that the sinner would go from bad to worse and renounce Judaism altogether. Members of the congregation who were dissatisfied with the rabbi's leniency appealed to Bacharach, who, although opposed to this lenient decision in which he saw an encouragement to sin, still maintained that leniency in some cases

*Jorah Deah 266-4. *ביתר ללמוד באקראי ביטול חכמות*

†Jorah Deah 189-43.

‡Ib. 183, 2.

§See p. 134.

may be justifiable, for even the Shulchan Arukh recognizes the principle that we are unable to enforce the traditional laws אין בנו כח להעמיד משפטי הדת על תלם.*

2. CIRCUMVENTION OF THE LAW AND INCONSISTENT APPLICATION.

The necessity to depart from the standard of tradition will make itself felt in questions concerning marriage more than in any other case, for it is just in such cases that the rabbi becomes aware of the responsibility which he assumes by a rigoristic refusal to comply with the demands made upon him. There were some burdensome laws which frequently conflicted with practical cases, and which the rabbi could not overcome by some evasive measure, as it is the case with the levirate. The rabbinical law does not permit a widow or a divorced woman to marry again before her youngest child is two years of age.† This law although meant to benefit the child by securing for it the full care of the mother, frequently harmed the child, because it prevented a destitute mother to marry again, and to provide for the child. We see, therefore, that the rabbis of 18th century found always some loop-hole to escape from this law, although maintaining that the authorities of old lost nothing of their importance, as in 19th century such instances occurred more frequently, because even the orthodox rabbis were conscious of their duty not to go to extremes, rabbinical literature of 19th century furnishes more evidence of the same fact.‡

Another important question is the marriage of a widow, when the death of her husband could not be ascertained by the identification of the body ענונה §. Here we see that the most rigoristic rabbis are inclined to take a lenient view of the law by trying to find the case that is before them an exceptional one.

A third class of matrimonial questions is the marriage between a woman that had borne an illegitimate child or that is pregnant and a Kohen. The strict law does not admit any evidence in regard to the father of an illegitimate child, and consequently when the

*Choshen Mishpat 17, 3, Chawoth Jair No. 141.

†Jebamoth 36, b and 42-b.

‡Eben Ha-ezer 13, 11.

§Appendix.

inhabitants of the town are not people who can enter into a legal marriage with a Jewess, the woman would be regarded a harlot and could not marry a Kohen. Still the greatest rigorist will find a loop-hole* through which they could escape the consequences of the law, which would be a hardship and an injustice, if the Kohen is the father of the child or is responsible for the pregnancy of the woman.

The reason for the leniency in these and similar cases is the practical necessity or the impossibility to carry out the law to the letter. The same reason is apparent in many other cases. Usury or even lending money on interest is against the biblical law, and although in the Pentateuch,† limited to Israelites only, the Talmud generalizes it and Rab Nahman, the great Babylonian jurist applies to one who would lend money on interest to non-Jews the scripture passage, "He that augmenteth his substance by usury and increase, gathereth for him that hath pity on the poor,"‡ and says that the extortions of King Sapor were a punishment for usury with non-Jews.§ Another passage in the Talmud|| explains the verse, "He that putteth not out his money to usury"*** to include the usury with non-Jews, and in a Midrash it is said that the dead whom Ezekiel resurrected were 600,000 Israelites who had worshipped the idol which Nebuchadnezzar had set up in the valley of Dura, and of the whole number only one was not resurrected because he had lent money on usury.††

The intention of this Midrash evidently is to show that God will sooner pardon idolatry than usury. Still R. Jacob Tam, known as a rigorist excuses usury because "we have to pay such heavy taxes

*Appendix I.

†Ex. 22, 34; Lev. 25, 35-37; Deut. 15, 3.

‡Prov. 28, 8.

§Baba Mezia 70b.

||Makkoth 24a

**Ps. XV, 5.

††Jalkut No. 375 from Pirke d' R. Eliezer. In Thossaphoth. Baba Mezia 70b. This Midrash is quoted from Thargum והוה בר שלח פרעה Ex. 13, 17 where I could not find it.

to the king and the barons, that even the highest rate of interest only suffices to meet the barest necessities of life.”*

The eighteenth century had brought the Jews into closer contact with their Christian neighbors, and the consequence was that they became laxer in regard to the ritual law. Amongst other things they allowed themselves to shave with a razor. In vain had R. Jonathan Eibeschutz proven that the prophet Isaiah had already condemned such a practice.† R. Ezekiel Landau, Elbeschutz's contemporary and antagonist, felt inclined to permit people to shave on Chol-ha-Moed, for as he precautiously indicates the practice to shave with a razor had grown to such an extent that if the Jewish barbers were not allowed to shave their customers with the salve, they would shave with a razor, and furthermore R. Ezekiel thinks that shaving before the beard is so long that the hair may be turned back to its roots, is even not prohibited when done with a razor.‡ Still in the nineteenth century this sin was so general that R. Akiba Eger could not any more sustain a demurrer against the testimony of a man who shaved with a razor, and accepted this testimony because the man had only been seen sitting in a barbershop with soap on his face and a towel around his neck, so that one could suppose the sinner had in the last moment repented of his evil ways.§ It is here practical necessity again that prompted the lenient theory.

*Thossaphoth, B. Mezia, 70b ה'ה חשיך, See on R. Tam. Graetz VI, 3, p. 179, where in Note 8, B. Mezia 7b instead of 70b.

†See אהבת יהנות on Is. 43, 21. This “homiletical” explanation of the passage in Isaiah, “The people whom I have adorned ¶ with thirteen rows of hair in the beard יספרו shave my glory,” is a classic instance of the degraded homiletics in the eighteenth century.

‡נורע ביהודה Orach Chajim I, 13 and II, 99-101. This leniency met with opposition. Azulai in שם הגדולים s. v. accuses Landau of having used false measure קו נטה, although he is inclined to leniency himself שאל No. 6. Isaac Samuel Reggie devoted to this question a special treatise מאמר התנלחת Vienna 1835 and his father Abraham Vita Reggio refutes the son's argument in a pamphlet called התנלחת. 1844.

§Respp. of Akiba Eger No. 96. פסקים especially interesting for the pilpulistic distinction between the testimony concerning sexual sin where it is not necessary to witness the act במכחול בשפופרת (Makkoth 7a B. Mezia 91a) and the testimony in regard to shaving when circumstantial evidence is not admitted, because in the latter case there is no יצר הרע, and the sinner may have repented in the last moment.

R. Mordecai Benet is another type of that uncompromising orthodoxy that refused to make the slightest concession to the spirit of the age. He is known as one of the strongest opponents to the reforms introduced into the Hamburg-temple.*

That he was opposed to the spirit of the Mendelssohn school goes without saying, and I have it on good traditional authority. Besides it is evident from his bitter fight against Aaron Chorin,† the only rabbinical representative of liberalism amongst the rabbis of that period. It will appear remarkable that he gave his approbation to the Pentateuch with Mendelssohn's translation and commentary, published by Anton von Schmied in Vienna.‡

But the government was in favor of education as a means to raise the condition of the Jews and in its protective policy wished to encourage the publication of Hebrew books in Austria. So Rabbi Mordecai yielded to the government's wishes and approved of the reprint of Mendelssohn's Pentateuch, saving his conscience by mentioning neither the translation nor Mendelssohn's name. R. Mordecai went still further in his desire to please the government. He gave his approbation to the reprint of the Machzor with Wolf Heidenheim's translation and commentary, although this was an open infringement upon Heidenheim's well-deserved copyright, and a direct violation of the rabbinical law of ban which a number of prominent rabbis had pronounced against all who would infringe upon Heidenheim's copyright. The subterfuge that such a ban could not have any power beyond the borders of the country in which the rabbis lived, was hardly meant in earnest by those who by such sophistry attempted to justify their action.

It was not any law or any religious conviction; it was simply the desire to please the government that made R. Mordecai willing to endorse the outrage perpetrated upon Wolf Heidenheim by Anton Schmied and his Jewish advisers.§ Two younger contemporaries

*In *אלה דברי הברית* p. 11, sq. and 18 sqq. See *חתם סופר* VI. No. 87, fol. 62d.

†Kerem Chemed II. 101. S. Loew's excellent sketch in *Gesammelte Schriften*, Bd. II.

‡1791, and in several reprints.

§The Machzor was published in Vienna 1805. Heidenheim's great merits have as yet not been duly acknowledged. He deserves a special biography.

of R. Mordecai Benet, Akiba Eger and Moses Sofer, like him strict rigorists, also were opposed to the least reform of worship and ritual law and conducted their Jeshibas in the spirit of eighteenth century. Of the former's yielding to the spirit of the age, we spoke already before. We may however mention as especially characteristic that he says in an approbation to a book published by a rabbi of Posen: "Your request to pronounce a ban against one who would reprint your book I cannot comply with, as I have made it a principle not to write nor to pronounce the word **חרם**. It may be necessary to add the explanation that the government of Prussia had prohibited the ban as an interference with the prerogatives of the courts.

For the same reason R. Eleazar Horowitz of Vienna refuses to yield to the demand of a rabbi who wanted his signature as one of the hundred required to permit a man to marry a second wife as is done in the case if the first wife is insane, and according to the rabbinical law cannot be divorced.* Horowitz implores his friend to desist from such an illegal intention and says that he did it once and repented of it, and in many a sleepless night that he passed in consequence of his action he vowed never to do anything which was against the law of the land.† This suppression of the rabbinical law when it comes in conflict with the state law is quite modern.‡

*See on this point Eben Ha-Ezer I, 10. The institutions of R. Gershom in Respp. of Meir Rothenburg. In Alexandria the custom still exists to make every bridegroom sign a statement that he would not marry a second wife, except the first wife had no children within ten years. The European Jews of Alexandria however refused to sign such a paper, and so the rabbi agreed to write in the marriage records that the groom should not marry a second wife except with the consent of the rabbinical court. E. B. Hazan **נוה שלום** Alexandria 1894, p. 486.

‡**אלעזר יד** Vienna, 1870.

‡Mar (Samuel, the great Babylonian teacher and jurist, laid down the rule **דינא דמלכותא דינא** (Gittin 10c) and in many parallel passages.) Still it was frequently explained to mean only such laws as are not in direct conflict with religious law. In recent years R. Hoffmann, of Meiningen, was severely censured because he would derive from this principle a permission for Jewish scholars to write their lessons on Sabbath. Orient 1842. When the government of Mecklenburg prohibited the early burial which was customary amongst the Jews, the latter refused to obey (Kayserling Mos. Mendelssohn, p. 276), and still Moses Sofer says the Jews should only yield to force in this question. Joreh Deah 338. He also seems to be inclined to oppose military

In olden times the rabbi was in the first and last place a judge as he still is to-day in the East, and R. Raphael Kohen in Hamburg resigned his office, because he would not officiate, when the government would not permit him to act as a judge in civil affairs.*a.

R. Moses Sofer may be regarded the real founder of Neo-Orthodoxy. He was the most consistent opponent to all innovations in practice and dogma. Yet in one case he gives utterance to a principle which is the very core of all reform theories. In the Ghetto of Eisenstadt a few Christians had bought houses, and according to the Talmudic law,† the subterfuge by which the prohibition against carrying anything from a house to the street and *vice versa* was nugified, viz: to make a fence around the Ghetto so as to make it one court-yard, could not be considered as valid. However, this fact could not be altered, and R. Moses says that the reason for this law was that the social intercourse between Jews and non-Jews should be prevented, but since in our age we have to come in contact with non-Jews in order to gain the means of a livelihood, this law cannot be carried out.‡ So even this champion of uncompromising orthodoxy is forced to admit that certain rabbinical laws have become inoperative.

Another champion of orthodoxy is Samson Raphael Hirsch. We gladly admit that he was sincere in his endeavor to maintain the religious standard of the eighteenth century, although he departed from it by permitting general education and modern social life. And so it happened that in his school a Schiller-celebration was held at which two girls appear in boys' clothes. To the question by an inquirer in one of the Frankfurt dailies how this fact could be harmonized with the Mosaic law,§ the answer was given that the parents of the girls had given their consent, and that the girls donned the boys' clothes only during one rehearsal and during the

service because of the conflict of the military with religious duties, although he would not commit himself on this delicate question, saying שתיקותי יפה מריבורי.

*aSee his biography in זכר צדיק II Part, מעללי איש p. 17b.

†Erubin 62b.

‡Chatham Sofer O. Ch. 92.

§Deut. 22, 5.

performance. The son of Samson Hirsch, Dr. Mendel Hirsch, principal of the school founded by his father, just recently had occasion to make the experience that it is easier to profess strict adherence to the tenets of orthodoxy than to practice it. In the month of Nissan he preached a funeral sermon in spite of the protest of an orthodox rabbi who was assisted by a zealous disciple, the latter attempting to put his master's theory into practice by pulling the speaker down from the pulpit.*

Dr. Israel Hildsheimer, the present champion of orthodoxy, created a sensation when he permitted the Palestinian colonists to work in the Sabbath year on no other grounds except that these laws could in our times not be carried out.† Marcus Hirsch, then chief rabbi of Prague, contrary to the letter and spirit of the rabbinical law‡, attended the funeral of Professor Soyka, although the latter had suicided. It is a difference between the orthodox practice in the ceremony of divorce, in the dietary laws, in the synagogue and elsewhere in *foro interno*, and between practicing it when higher interests are at stake. Therefore we will not find any orthodox congregation in civilized countries that would be willing to carry out the rabbinical law which makes it the duty of the rabbi to excommunicate every trespasser upon even the least of the rabbinical injunctions, and to refuse to such a man a decent burial.§ Practice has made these laws inoperative; it has simply re-established the Talmudic principle *מנהג עוקר הלכה*,|| custom breaks law. And, when R. David Ibn Zimra already in the sixteenth century warns against any inconsiderate application of disciplinary measures,** it is on the ground of the principle that a law cannot be executed, without sometimes doing more harm than good. And therefore the explanation of the word *מנהג* is given in the Talmud as a law that

*Allg. Isr. Wochschr., Berlin, 28. Aug., 1896.

†*שבת ציית* see on this question. The Hebrew Almanach Achiasaf 1896-7, p. 293.

‡Joreh Deah 345, 1.

§e. g. if he does any work on the afternoon of the day preceding the Passover (Joreh Deah 334, 43, 12; see also ib. 334, 3).

||Jer. Jebamoth 12, 1.

**Respp. Venice, 1749, No. 187 *למנהגי הדור להיות מתן בדברים האלה*.

shall not be taught theoretically but may be tolerated and even made the basis of practical teaching.* So it is acknowledged that urgent demands of the time are more important than theoretical laws, and R. Maleachi Ha-Kohen Montefoscolo gives the best expression to the preponderance over theory of the practice in laying down the principle: The rabbis have a right to change a law of the Thorat יש כח ביד הכמים לעקר דבר מן התורה.

II. TRADITION AND PSEUDO-TRADITION.

We have so far attempted to prove that religious life could not and was not always conducted on the basis of traditional law. Consciously or unconsciously even the strictest rigorists had to depart from the rules of the church. Sometimes they would acknowledge that it had become impossible to abide by the decisions of the law, sometimes they lulled their conscience asleep by establishing in the case that they had decided an exception to the rule. Still that there was a tradition that could and would under normal conditions regulate our life; in their opinion admitted of no doubt.

However in our age, this has become, to say the least, very doubtful.

1. The first objection to the belief in a tradition is, that it presupposes that the Pentateuch in its present shape was written by Moses, and that Moses during the forty days which he stayed on the Mount of Sinai received another revelation which he taught Joshua and which was orally transmitted from generation to generation until the time of Jehuda Hannassi, when these laws were written down. This is the meaning of the extravagant statement that the whole Bible with Mishna and Gemara had been revealed to Moses,† and that he knew even what a disciple in the latest times would discover,§ and that the commandments with all their detailed explanations were given to Moses on the Mount|| of Sinai.

* Taanith 26b, see however the contrary statement in Baba Bathra, 130b.

†Jad Maleachi 295.

‡Berakhoth 5a, accepted literally by Abraham Sutro in his *מלחמות ה'* Frankfurt, 1862, a pamphlet full of invectives against reform. (Rabbonim-Orgeldreher.)

§Jer. Meg. II., 5.

||Saphra ad Lev. 26, 46.

This fanciful assertion was later on limited by liberal scholars, but still the idea of an oral tradition to some extent is admitted by Maimonides,* Saloma Lurja,† Lipmann Heller,‡ Nachman Krochmal,§ Hirsch Chajes||, Zacharias Frankel,** Jacob Bruell,†† and Isaac Weiss.‡‡ This belief in a tradition presupposes the belief that the Pentateuch existed as an entirety at the time of Moses. We will be hardly willing to accept such a statement, after that which modern criticism has labored in this direction, and if we have not the duty to explain away the difficulty why one author should write two contradictory statements, it will be unnecessary to recur to a traditional method of hermeneutics.

2. Tradition rests chiefly on the great synagogue and the belief that this body is the connecting link between the last of the prophets and the oldest known authorities of the rabbinical period. That such a synod existed, is not proven but it is evident that the need of it existed in the third century,§§ when the rabbinical law was

*Introduction to the commentary on the Mishna. See the thorough discussion of his views in Jair Chajim Bacharach's Respp. No. 192.

†In his preface to ים של שלמה בבא קמא

‡Introduction to תוספות ו"ט and Edujoth 8, 7, Aboth I. 1. Sotah 2, 2, Temura 2, 2; 3, 3. Jebamoth 8, 3; Zebachim I. 3,

§In מורה נבוכי הזמן

||In מבוא התלמוד and esp. in the 13th chapter of his תורת נביאים, called also אלה המצות.

**In ררכי המשנה, p. 12, although it is not quite clear how far back Z. F. would date the laws which he calls ישנות מאור

‡‡מבוא המשנה Frankfurt 1876 p. 3, ff. and 259.

‡‡His apology of tradition, esp. Gesch. d. j. Trad. I. 77 see also his Introd. to Saphra Vienna 1864 and his defense of Frankel." Mielziner (Introd. p. 60) speaks of laws that date back to times immemorial. Bruck an opponent of Rabbinical Judaism takes it for granted that there must have existed an oral besides the written law. (Pharis. Volkssitten Frkf. 1840) Reggio Bechinath Ha-Kabbalah page 23.

§§Abraham Krochmal in his ביאורים והארות Lemberg 1881, p. 16 dates the patriarchate from Gamaliel I., but it seems that the aspirations for such an office started with Gamaliel II. about 100 A. C. and were not recognized before Jehuda I. about 200 A. C. had succeeded to make the school of Sepphoris the central seat of authority.

regarded authoritative, and in order to be authoritative it had to be traditional, and if it was traditional, there had to be an uninterrupted chain of tradition from Moses down to the age of the compiler of the collection: "Sayings of the Fathers."

Against the belief in such a body we have first of all the negative argument *e silentio*, then the fact that the Synhedrin in historic sources is a judicial court only and as such only it is thought of in the idealized prototypes in the Pentateuch.* As a body for religious legislations and for the interpretation of the law it existed only in the dreams of Rabban Gamaliel and his successors whose highest aim was the establishment of a religious authority.

The historical Synhedrin was presided over by the high priest,† and at least partly, and sometimes entirely composed of Sadducees‡ who rejected tradition altogether. The laws attributed to the men of the great synagogue are of late origin, none of which can be proven to have existed before the destruction of the temple,§ while in most instances these laws can only have existed after the destruction of the temple.||

*Deut. 17, 8-13. So Ibn Esra עם השופט ירבר See on this question I. S. Regio in his remarks on Leon Modena's קול סבל in בחינת הדת p. 134 ff. against the Talmudic interpretation Ber. 19, b; Sabb. 23, a. Sukka 46, a.

†Matth. 26, 3, 57. Acts 23, 2, 24, 1. IMakk. 12, 6. See Frankel Dar'khe ha-Mishna p. 12 Kuenen: Over de samenstelling van het Sanhedrin in Verslagen en Mededeelingen D. K. Akademie etc. 1866 p. 131-168. Schuerer: History of the Jewish people etc. Herzog u. Plitt Real encyclopædie f. prot. Theol. 2nd ed. XV. 101, Riehm: Handwörterbuch d. bibl. Alterth, 2nd ed. II. 1619.

‡Acts 4, 1. ff. 5, 17, 34. 23, 6. Jos. Antiq. 13, 10, 5-6 and 13, 16, 2. Kiddushin 66b. See Graetz III. p. 684 ff.

§So Frankel l. c. p. 5 who says that only the passage in Aboth I. 2 which contains the general principles for the conduct of the rabbis, viz: to be cautious in rendering judgment, to spread the law, and to protect it by a fence of new regulations is historical. So Krochmal מונ"ה Bruell מבוא המישנה p. 5 ff. Weiss. I. 54 ff. Still this rule may also be an ideal of the third century, when Aboth was written, transferred to antiquity.

||E. g. the Tephilla, which is ascribed to them, Ber. 33a, Meg. 18b, although it is full of allusions to conditions that could only have existed after the destruction of the temple. The way out of this difficulty, according to which only the first three and the last three benedictions were made by the

Simon the Just the only name of a member of this Synhedrin is no doubt Simon the Makkabee* who in one instance unmistakably is referred to by that name† while in other instances there is a quid-proquo not rarely found in historical reports in the Talmud, when the rabbis identified Cyrus, Darius and Ahasverus,‡ or Alexander and Cæsar§ or Flavius Clemens and Akylas and the latter with the unknown author of the Aramaic version of the Pentateuch.¶ So evidently Simon the Just was identified with Simon the Makkabee, the latter being the oldest name preceding the Pharisean development of Judaism which originated under the reign of John Hyrkan.

3. The impossibility of any oral law is evident from the fact that the written law is spoken of as sufficient, and admitting of no addition or diminution.**

This is the view of the Sadducees and of the Karaites, and strongly advocated by Leon Modena supported by arguments which need no additional evidence. Our apologetes of tradition recur to arguments which are so arbitrary that they are refuted by their own sup-

great Synagogue. (Zunz: *Zur Gesch. u. Liter.* p. 380; Graetz II. 2. 188) is simply a solution worthy of the old *Derasha*, and not better than the Talmudic report that the Tephilla was written by the men of the great Synagogue and restituted by R. Gamaliel, after it had been forgotten. Other facts referred to the great Synagogue, as the division of the Bible into chapters and verses, which Heilprin p. 133 ספר"ד also understands as a restitution of the original manuscripts, need hardly a serious refutation.

*Lœw in Ben Chananja I. 198.

†Tosefta Sota Ch. 13, p. 319, in Weiss. I. 86, note 2 erroneously quoted Ch. 3. The text is evidently corrupt in many passages. Still it is clear that Simon the Just is not the high-priest known by that name, but either Simon the Makkabee or a later one.

‡Rosh ha-Shanah 3b. See Dei Rossi, *Meor Enajim* I. 214.

§Sukkah 51b. The parallel passages in Dei Rossi l. c. I. 166, where the author attempts to prove that Alexander who is said to have killed the Jews of Alexandria is Trajan, which is quite possible.

¶See the excellent discourse of Graetz on that subject, which is a masterpiece of historical research IV-3 p. 403. The recent work of Friedman, Onkelos und Akylas, Vienna 1896 has not shaken any of G's results.

**Deut. 4. 2; see Geiger; Leon de Modena, in the Hebrew part p. 2b Hechaluz: V. 28, sq.

positions, so S. R. Hirsch * * says that the Talmudic authorities in whose names certain laws are recorded, only mean to reproduce the tradition,* e. g. when the Talmud says:† Three laws must be observed even at the risk of one's life, viz. the prohibition against idolatry, murder and incest, this is not, as Graetz‡ asserted, a law made in the time of the Hadrianic persecution, but is tradition, taught by Moses, and handed down from generation to generation, although the Talmud records it as a resolution passed by a meeting of rabbis in a secret session held in the house of נתנה in Lydda. When Rabbi Jochanan interpreted this resolution as meant for times of peace only while in times of religious persecution even for the least law one would have to sacrifice his life, even this interpretation is a tradition handed down from Moses and just accidentally preserved by R. Jochanan. When Rab interprets the words מצוה קלה as a change of the shoe laces, this too according to S. R. Hirsch is a tradition. The next thing for this believer would have been to say that when R. Isserlein of Marburg interpreted the words שעת הנורה to mean when the intention of the law-giver was to make the Jews abandon their faith אה כונתם להעביר הדת § this also was a tradition which Israel Isserlein 3,000 years after Moses found necessary to promulgate.

The strongest arguments against the probability and the possibility of an oral law are those adduced to prove its existence. The argument of R. Jehuda Hannassi, taken from the passage, "Thou shalt kill of thy herd and of thy flock, as I have commanded thee,"|| which according to R. Jehuda Hanassi means that Moses had orally commanded the rites of Shehita,** is extremely weak, for the words, "as I have commanded thee," refer to verse 14, and are a repetition of the injunction that sacrifices shall only be offered in the one holy place, while animals for food may be slaughtered everywhere.

*See Jeschurun 1858, IV. 289ff.

†Synh. 74a.

‡Graetz IV-3, p. 157.

§Therumath ha-Deshen II No. 235.

||Deut. 12, 21.

**Chullin 28a.

Zacharias Frankel, in his Introduction to the Mishna, carefully avoided any definite statement as to the origin of the rabbinical law. He is satisfied to bring evidences from older authorities that not everything that is called Sinaitic tradition came really from Sinai.* The positive answer to the question how much of the rabbinical law is to be dated back to Moses, Frankel seems to have evaded, although this precaution did not prevent S. R. Hirsch, the champion of traditionalism, from denouncing Frankel's book as heretical. It is sufficient for Hirsch that Frankel had said the men of the great synagogue had established their laws on an exegetical basis,† which would at once do away with all tradition. Frankel however proved the ancient origin of many laws by pointing out the style of the Mishna, e. g., a gate that is higher than 20 cubits shall be lowered,‡ which presupposes that it must have been an old law to close the entrance into a street on Sabbath in order to make it appear as one courtyard. Or: When shall we read the Shema?§ which presupposes that it had been an old custom to recite the Sh'ma twice a day. This is undoubtedly true, but it does not follow that these laws originated previous to the second century. In the instance of the Sh'ma, it is clearly stated that it had its origin in the opposition of the rabbis to Christianity.||

As an illustration we may recite the following instance. When Moses Isserls** (d. 1572) records the law that the Qaddish shall be recited, although none of the worshippers present had during the last year lost his father or his mother, it follows that the Qaddish of the orphans was a universal custom during the sixteenth century, but it does not follow that this custom was known in the fourteenth, and it really seems to be not older than the fifteenth century.

Another apologete of the authenticity of rabbinical tradition, although to a very moderate degree is Isaac Hirsch Weiss.†† His

*Frankel l. c., p. 21.

†Ib., p. 5.

‡Erubin 1, 1.

§Berakhoth Ch. I, 1.

||Jer. Ber. I. 8., fol. 3c מפני טענת המינין.

**Orach Chajim 132, 2.

††Gesch. d. j. Tr. I, 5 ff. II, 196, ff.

arguments will hardly stand the test of criticism, even if tested by the sound scientific results of his own investigation. His argument that the words, "He shall write her a bill of divorcement"* prove that there must have existed a traditional law concerning the form of such a document, is an utter failure. By such a method we could prove that the thirteen lines of this document† are a traditional law originating from Moses. The evidence would rather point the other way, viz., that the law-giver established a new law in order to abolish the general custom to divorce a wife without recording the act, and since this law-giver is not Moses, the latter could not have taught this law with some additional oral explanations. On the other hand, it is a general fact based on psychological laws that certain religious customs become so general that they finally are believed to be laws dated back to the founder of this religion.‡

The only way to solve the question about the origin of the traditional law is given in the words of R. Jochanan, frequently quoted by Weiss: If you find a law which seems strange, do not contest it, for many laws were given to Moses on the mount of Sinai, and all are embodied in our Mishna.§ Criticism of certain traditional customs, as not consistent with scriptural laws or as not authentic, was met by the argument that these customs were based on oral tradition, and so the belief in an oral tradition was established. Even in Talmudic times we find the complaint that laws derived from scripture by arbitrary exegetical methods were, in order to refute all objections, simply attributed to Moses. It is told in the Talmud that Moses, when he went to heaven to receive the Thora, saw God busy making crowns on some of the letters of the Thora. "Who is retarding thy work?" Moses asked. "There will come a man," God replied, "Akiba ben Joseph is his name, who will derive from every dot on the *על כל קרן וקרן* mountains upon mountains of laws." Said Moses, "Ruler of the world, let me see this man."

*Deut. 24, 1.

†Eben Haezer 125, 11, 12.

‡The Lord's supper is based on such an attempt to refer the retention of the Passover rite back to Jesus. The Germanic mid-winter festival is explained from the birthday of Jesus. In the religious practice of the Jews such instances abound.

§Jer. Peah II, 4.

Said God, "Go back." So Moses went and sat down back of the eighteenth row of seats, and did not understand what he (R. Akiba) was saying. When R. Akiba had said something, his disciples said, "Rabbi, whence doest thou know that?" and the Rabbi replied, "This is a Mosaic tradition." Then Moses recovered and said to God, "Thou hast such a man and givest the Thora through my hands," but God said, "Keep silent, this is my will." Now Moses said, "Thou hast shown me the man, show me his reward," and God said, "Turn back," and Moses turned back, and saw that they tore his flesh with iron hooks and he said, "Is this the Thora and this its reward?" but God said, "Keep silent, for this is my will."*

The legend may have been altered from its original form, but still it is evident that it is meant as a protest against R. Akiba's arbitrary exegesis, and against the claim that the results of such an arbitrary exegesis are to be considered as traditional laws, and it shows further that the author of this legend or parable meant to say that Moses would not recognize his own Thora after the treatment which it received from the hands of R. Akiba, and that the terrible death which the latter had suffered, was partly deserved by the distortion of the word of God which he had established.

Should we in spite of all evidence to the contrary grant the supposition that there was, or at least, that there may have been an oral law, we would have to admit that many of the oral laws which are stated as such, are of late origin. First of all, contradictory statements can not be traditional, for at least one of them must be erroneous. Still both Talmud and Midrash maintain that the passage in Ecclesiastes,† "The words of the wise men are given from one shepherd" proves, that, though one declares a thing to be prohibited and the other to be allowed, one declares a thing unclean and the other clean, even these contradictory statements are the words of God.‡

Similarly it is said of the dissensions between the Hillelites and the Shammaites that the opinions of both schools are the words of the living God, although the opinions of the Hillelites are norma-

*Menachoth 29b.

†12.‡11.

‡Kohleth rabba ad locum; Chagigah 3b.

tive.* This is evidently impossible, for if Moses explained as the Shammaites teach† the law of divorce in the sense that adultery only constituted a legal ground for divorce, it is impossible that he should have explained that the slightest shortcoming in the conduct of the wife gave the man a right to obtain a divorce, as the Hillelites teach.†

*Jer. Berakhoth I, fol. 3c. The inference of Weiss II, 71 that the Bath Qol which is said to have decided in favor of the Hillelites is a legendary expression of either R. Jochanan ben Zakkaj's or R. Gamaliel's decision is hardly tenable, as even R. G.'s son and successor, Simon II, had still to contend with the opposition, and it was only R. Jehuda I who finally overcame it. The real meaning of the Haggada is, that from the beginning the controversy between Shammaites and Hillelites was a merely theoretical one, so that it was not by human but by divine authority that practice accepted the Hillelite's views. It seems to me that Hillelites and Shammaites do not go back to the men whose names they have adopted, but are factions of the Pharisees which originated only after the destruction of the temple, and were divided on the attitude which they took towards Christianity, the Shammaites with R. Eliezer b. Hyrkanos standing nearer to the Christians and partly amalgamating with them; the Hillelites, with R. Gamaliel as leader, opposing them. I hope to devote to this question a separate essay.

†Gittin 90a. The Shammaitic doctrine is identical with Matthew 5, 31, 32; while R. Akiba as radical opponent of Christianity, teaches that one may divorce his wife without any other reason but because he likes another woman better. R. Akiba's opposition to Christianity is already manifest in his literal exegesis, in his opposition to intermarriages with heathens, Mekilatha Ex. 15, 12., ed. Weiss p. 44a, which Judeo-Christians tolerated (I. Cor. 7, 12, ff.) his strict prohibition against apocryphal literature ספרים חיצונים (Synh 90a) his ridicule of the Christian miracles in his conversation with זנון, (Aboda zara 55a) no doubt the representative of the Stoics, whose founder was Zeno, his opposition to the allegorical explanation of circumcision (comp. Gen. Rabba 46 Sabbath 108a with Rom. 2: 28, 29); his ridicule of baptism, praising Israel happy that are cleaned by their father in heaven, (Yoma 85b) and not by Jesus Christ (Matthew, 28, 19; Mark 16, 16); his connection with the four men who entered the Pardes (Chagiga 14b), one of whom, Acher, is Jesus, as I shall prove in another place while Ben Zoma, who saw the heaven open and the spirit of God descend like a dove (ib. John I, 32, 33, 15a) and Ben Azai the celibataire (Jeb. 63b) stood partly on Christian ground. (See Weiss II, 112, note 1) R. Tarphon (Tryphon), a convert to the Hillelites from the Shammaites is another opponent to Christianity; (Sabbath 116a) who advises to burn the Gospels גליונים—the Talmudic explanation of גליונים as margins is a bad guess—without regard to the passages from holy scripture quoted in it.

Therefore from early times already we find limitations to this belief. Maimonides in the introduction to the commentary on the Mishna teaches that a law which is the subject of controversy can not be traditional.* Rabbenu Asher says that the term Mosaic tradition in many cases means that the law is as universally accepted as the laws of Moses.† Salomo Lurja, although he denounces Ibn Ezra for rejecting the rabbinical exegesis, holds the same view as Maimonides,‡ and Aaron ibn Abraham Chajim in his introduction to Saphra,§ and Lipmann Heller in his commentary on the Mishna|| also accept the more liberal view that a statement which is controverse cannot be regarded as traditional. That the orthodox view is still held cannot surprise us when we remember that the great body of Chrtstians believe in the authenticity of the gospel history, although the two pedigrees of Jesus are contradictory, and believe in the authenticity of Jesus' teachings although in such vital points as in regard to the validity of the law or in regard to the position of Christians to the heathen world Jesus is credited with statements, one of which expresses just the opposite of the other.** Similarly the Catholic church holds the infallibility of the pope, although it was a pope who condemned the Copernican system as an error,†† and another pope who solved the economic question by an anathema against Socialists.‡‡ while other infallible popes meantime have retracted the opinions of their infallible predecessors אלו ואלו דברי אלהים חיים.

אבל מי שיחשב שדינן שנחלקו בהן מקובלין מפי משה-הוא דברי מי שאין בו שכל*

†In מקואות הל' printed in the 12th volume of our current Talmudic editions, quoted in Frankel p. 20.

‡See his introduction to ים של שלמה ב"ק.

§קרוב אהרן Venice 1606, Dessau 1742.

||Edujoth 8, 7 and other passages. See p. 5.

**See my essay on "The origin of Chr." in American Israelite, Jan. 30 and Feb. 6, 1896.

††Up to 1757 all books teaching the revolution of the earth around the sun were on the Index. See Liter. on Galilei's Trial in Holzman u. Zoepfel Lex. f. Theol. p. 311.

‡‡Pius IX in Syllabus.

Authenticity of the law presupposes its ancient origin, e. g., if the episcopal system of church government is the proper one, then Jesus must have established it. Similarly, if the rabbinical laws are correct and are the proper explanations of the Thora, then Moses must have recorded them on the Mount of Sinai, and so we are repeatedly told, that the law with all its details *דקדוקיה והלכותיה** is transmitted through an uninterrupted chain of traditional authorities from the times of Moses. We are told that the scribes, i. e., the supposed successors of Ezra who are believed to have preserved the tradition from Ezra up to the Maccabean time—introduced as a new custom had come from Moses, and in one special instance we find in the Talmud the historical monstrosity that the book of Esther and the custom to read it in the synagogue on Purim dates back to Moses.† It is further maintained that the whole Bible, the Mishna and the Talmud‡ even what the least of the disciples would lay down in the latest times were revealed to Moses,§ and, when it is said of Rabban Jochanan ben Zakkaj that he knew the problems put up by Raba and Abbaj three centuries after his time,|| it seems that the idea was that nothing new had ever been established in religion, although at the same time the statement is a hyperbolical glorification of the actual founder of Rabbinism.

Later legends, not satisfied with these statements, make Abraham observe all the rabbinical laws, including the subterfuges by which the biblical laws were evaded. *עירובי תבשילין*** It is the same spirit which created the belief that Abraham had written the daily morning prayer, or at least had made it a duty to pray every morning.††

*Saphra Lev. 26, 46 Rashi ib. 25, 1.

†Sh'buoth 39a; Jer. Meg. 7, 7.

‡Ber. 5a.

§Megillah 19a; Jer. Meg. 2, 5.

||Baba bathra 134a.

**Joma 28-5. How sincerely these extravagant statements were believed up to our century we can see from the Derashas of Jehuda Rosanes (died 1728) *פרשת דרכים*, who asked the question how Abraham could have observed the Sabbath since the Tlm. says that a non-Jew who observes the Sabbath is guilty of death. Similar wisdom is found in Salman Cohen's rabbis of Fuerth (d. 1820) Derashas *המים*.

††Ber. 26b.

A similar historical monstrosity is the assertion that the orthographical peculiarities of the biblical text are of Mosaic origin. So it is stated that the final letters are to be dated back to Moses,* but this is an assertion which can not be accepted, as almost all inscriptions and coins show the exclusive use of the old-Hebrew alphabet, while the square characters came in use only since the first century B.C. Equally impossible is the Talmudic report that **מקרא סופרים** **ועיטור סופרים קריין ולא כתיבין כתיבין ולא קריין** are transmitted from Moses.† We are not certain about the meaning of all these terms as the tradition on these terms may be younger than the statement itself, and therefore may be an attempt to explain a Barajtha, the original meaning of which was forgotten just as the attempt to explain the Greek words **דייתקי** and **אפותיקי** from the Aramaic‡ shows that the true etymology was forgotten. However, if we follow the traditional explanation **מקרא סופרים** means the pausal forms and **עטור סופרים** means certain passages in which a ׀ was omitted.§ To illustrate the latter some passages from Psalms are quoted, just as to illustrate the cases where a word is added to the Massoretic text **קריין ולא כתיבין** and where a word is stricken from the Massoretic text **כתיבין ולא קריין** passages from the prophets are quoted. If we should be willing to uphold the theory of Mosaic tradition as found in the Talmud, we would have to believe what the Talmudic Haggadah|| says that Moses received already the Prophets, the Hagiographa, the Mishna and Gemara. It is only under this condition that we could understand the Talmudic statement that one who denies one single rabbinical interpretation or the correctness of one inference *a minore ad majus*, or by analogy is under stricture of "the word of the Lord he has despised" and excluded from future happiness.**

Samson Raphael Hirsch was therefore perfectly right when he protested against the election of Dr. Kroner to the rabbinical office

*Jer. Megillah I, 9. Babbi Sabbath 104a. On the difference between the two Talmuds and other parallel passages see Schorr in Hechaluz IV. 33.

†Nedarim 37b.

‡B. Mezia 19a, S. Levy's Wörterbuch s. v.

§See on this difficult expression Weiss I. 61, f. and Kohut Aruch s. v.

||Ber. 5a.

**Synh. 99a.

at Treves, because the disciples of the Breslau school had learned to regard the rabbinical laws from a historical point of view, i. e., to explain them from conditions of the age and from individual points of view held by the author.* Hirsch was also right when he protested against the fourth volume of Graetz's history of the Jews because the author had explained the resolution passed by the Council of Lydda which restricted the duty of martyrdom to idolatry, incest and murder from the Hadrianic persecutions; while according to Hirsch's view on tradition this restriction, like all rabbinical laws, originated from Moses, or more properly speaking were revealed to Moses on the Mount of Sinai and handed down by oral tradition from generation to generation.†

Hirsch was also right when he sounded the bugle call to gather the orthodox forces against Frankel's introduction to the Mishna,‡ because the latter had observed a very significant silence in regard to the Mosaic origin of the rabbinical laws, a silence which after the attack made by Hirsch he ought to have broken, even according to his vindicators, S. L. Rappaport§ and Samuel Freund.|| Frankel spoke only of the mysterious scribes (Sopherim) as the founders of the rabbinical law, and said that these men after mature deliberations had established the traditional exegesis **הפירושים האלה נאמרו** **במועצות ודעת מפי אנשי כנהג** but he failed to add that the laws derived by such methods from scripture had existed before.** Frankel further explained the excommunication by Rabban Gamaliel of R. Eliezer ben Hyrkanos, which according to the Talmudic report†† was due to a diversity of opinion on the question whether a tile-stove which had been defiled becomes clean when the tiles are

*Jued. Literaturblatt. 1879, 158.

† ** p. 6.

‡Jeshurun 1861, Jan. This controversy produced quite a literature, which would deserve a special review.

§In **דברי שלום ואמת** Prague, 1861, p. 28.

||Freund, a very queer character, attacked Hirsch with insulting words, but refused to sign the resolutions in which the congregation of Prague expressed confidence in Frankel in Hirsch's *Vorläufige Abrechnung*, p. 29.

**Frankel, p. 4.

††B. Mezia 59a, f.

taken apart and the stove rebuilt **תנורו של עכנאי**, as a victory of the Hillelites over the Shammaites, while this question only served as an occasion to settle the dispute between the rival schools by a majority vote.* Hirsch† rightly says that the rabbis who made use of such diplomatic methods to settle religious controversies could not claim our undivided respect nor could laws established by such methods command our undisputable obedience. Still even Frankel and his followers had only discovered part of the truth. The controversy about the Akhnai-stove is altogether a fiction by which the latter rabbis disguised the real cause of R. Eliezer's excommunication, and this real cause was R. Eliezer's as the whole school's of the Shammaites' leaning towards Christianity which is apparent from the legendary narratives concerning R. Eliezer as well as from some of the laws which bear the name of R. Eliezer.‡

It has to be admitted that if the historical method of Frankel and his followers be true, the whole idea of a tradition falls to the ground, although Frankel himself, partly because of his emotional religiousness which he displayed in his attitude during the controversy on the second edition of the Hamburg prayerbook§ and towards the Frankfurt rabbinical conference,|| and partly because of his adversity to all polemical literature, had not the slightest desire to enter into a question that would involve him in an endless literary feud, and so he seems to have been opposed to the settlement of the question about tradition, even for himself.

We, however, have no desire to dwell in the dimly-lighted atmosphere of an emotional attitude towards the rabbinical law without settling the question scientifically, and in order to do this we will quote three instances; two of which are so old that they will serve

*Frankel, p. 89.

†Hirsch, 1. c. p. 7.

‡Weiss II. 87 refers to a special investigation which M. Friedmann devoted to this subject, but as M. Friedmann wrote to me he dared not publish it owing to the anti-semitic agitation, and therefore gave me the material gathered on this subject, which I publish here with the expression of gratitude to this excellent scholar. S. Appendix II.

§Orient 1842, Lit. Bl. 353 ff.

||Which Salomon Klein in his **מפני קשט** Frankfurt, 1861 counts as one of Fr's merits.

as classical instances against the claim of a Mosaic origin of the rabbinical law, while the third shows such a wide departure from the text of the Pentateuch, that it will serve to prove that in the second century, in spite of the belief in an authentic tradition, new laws were consciously derived from the text of scripture. These laws are the interpretation of retaliation, the date for Shabuoth, and the prohibition against the mixing of meat and milk.

The law of retaliation (*jus talionis*) is clearly stated in three passages of the Pentateuch.* That it has to be understood literally follows clearly from the context. If life for life is to be understood literally, then evidently eye for eye has to be understood literally. It also is proven as the Karaites emphasized from a grammatical point of view, "As he hath caused a blemish in a man so shall it be rendered unto him" וְיִתֶּן כִּי.† It is evident further from a historical point of view, because the later Pharisaean exegesis had for apologetic reasons limited the law of retaliation in the case of false witnesses to the case, when the falsehood was discovered after the sentence was rendered and before it was executed.‡ This illogical application of a law could never be understood, if it had been a practical one, but it is an apologetic attempt to defend the law before the forum of a changed ethical judgment. The fact that the Egyptians, Solon, and the Roman legislation had a similar law§ may also be regarded as a historical evidence against the reliability of the rabbinical exegesis. Finally the psychological basis of the law, the satisfaction to the ethical sense derived from retaliation, is still recognized in the philosophical system of Herbart.|| So all possible evidence stands against the truth of the rabbinical interpretation of this law, and consequently this interpretation, although very old, and partly testified to by Josephus** is not a traditional one in any

*Ex. 21, 24, 25; Lev. 24, 19, 20; Deut. 19, 19, 21.

†Ibn Ezra Com. on Ex. 21, 24.

‡Makkoth 5b נהרגין הרגו אין נהרגין ב.

§See on the parallels in the ancient laws: Dillmann Comm. on Exodus 2nd ed., p. 232. Michaelis, Mos. Recht. 5, 55, ff. Saalschuetz Archaeol. II. 290 Frankel, ger. Beweiss p. 50.

||Idee der Vergeltung oder Billigkeit.

**Josephus Antiq. 4. 8, 35 interprets retaliation as optional, and concedes to the plaintiff the right to change it by accepting damages, while Philo II. 329 and 332 insists on the literal explanation. See Ritter Philo und die

sense that would make it equal to the Mosaic law. The date of Shabuoth is another instance of the same character. The biblical injunction,* as Ibn Ezra† in his intentionally obscure language indicates, leaves no doubt that Shabuoth is a festival of movable date. His argument that Shabuoth is the only festival for which no date is given and that if the date were fixed the counting would become useless, can not be refuted. Still the counting of the fifty days according to the rabbinical Pharisaean exegesis begins with the second day of Pessach instead as it ought to, with the first Sunday, and this exegesis, old though it be, is not traditional in the proper sense, because it is diametrically opposed to the letter and spirit of the biblical law.

The prohibition against the mixture of milk and meat is one of the most significant evidences of pseudo-tradition. This law, "Thou shalt not seethe a kid in its mother's milk,"‡ is obscure and perhaps only to be explained from conditions of the age which are unknown to us, but surely it does not mean a prohibition against the mixture of milk and meat,§ and if Wiener's clear representation of the scientific facts need any support, it is furnished by the lamentably weak criticism of D. Hoffmann.|| The only possible explanation of such an exegesis is found in a stubborn opposition to Christianity, which favored a more symbolical exegesis and against which the orthodox school of R. Akiba upheld the principle that God's laws must not be explained as symbolic expression of his mercy but are mere

Halacha, p. 19. Philo's testimony is in itself sufficient to prove that the Pharisaean interpretation of the *jus talions* is merely apologetical.

*Lev. 23, 15.

†Com. ad locum.

‡Ex. 23, 19. 34, 26. Dent. 14, 21.

§Chullin 103b. Frankel Vorstudien zur Septuaginta p. 183. Herzfeld Jued. Gesch. III, 531. Rappoport מלין ערך p. 101a. Ritter l. c., p. 128. Wiener: Speisegesetze. Philo II, 399 says that it is a cruelty to seethe the kid in the milk on which it fed, an argument which Ibn Ezra, Com. on Ex. 23, 19 seems to favor, for in his usual way he sarcastically defends the rabbinical law, saying, that as we buy meat and milk on the market we might accidentally cook a lamb in its mother's milk, and shall therefore not cook any meat in milk.

||Jued. Presse 1896.

decrees גזירות.* And in spite of the fact that this interpretation is contrary to all laws of exegesis, that it is only found since the second century,† that in Babylonia it was still unknown in the third century,‡ it is since that time held to be traditional. So we have proven that recent laws could by and by be regarded as traditional, and that even the old laws are far from being traditional in the sense that they are the oral explanation of the written law, as given by its original promulgator.

6. It is a fact which no reasonable man can deny that there exists a pseudo-tradition, and that in religious literature, especially fraud and self-delusion were to a great extent instrumental in the production of a vast pseudo-epigraphic literature. In a critical age like the eighteenth century the songs of Ossian were published and believed to be the authentic poetry of a Scotch bard of the third century, and a man like Goethe accepted them as an ancient document, although in the best case their origin does not date back farther than the twelfth century.§ Bodenstedt could make the world believe that the songs which he published as songs of Mirza Schaffy were the product of an oriental writer, and, had he not chosen to confess his authorship there might be believers today.|| Just recently a notice went through the papers that the sentence against Jesus rendered by Pilate is preserved in a brazen tablet in the monastery of Caserta.** One Notowitch a year ago had the impudence to publish an account of Jesus' biography from his thirteenth to his thirtieth year, which he pretended to have discovered in a Tibetan

*Berakhoth 33b; see also Megillah 25a.

†The oldest authority quoted in connection with this interpretation is R. Akiba, and to him seems to belong the honor of having first interpreted the threefold repetition of this law (Chullin 113a).

‡Rab, returning from Palestine to Babylonia, his native country, found that the prohibition against the mixture of meat and milk was unknown there (Chullin 110a.)

§Stephens: The literature of the Kymry. This is a case very similar to our tradition. It may be old, but is not as old as it purports to be.

||Koenig Literaturg p. 642.

**Cinc. Volksblatt, March 9, 1876.

monastery.* The princes of the imperial house of Austria today possess the title of arch-duke, which is derived from a forged document ascribed to Emperor Frederick Barbarossa, but in reality manufactured by Duke Rudolph in the fourteenth century.† The papal archives abound with such documents.‡ Mediæval authors manufactured not a few Aristotelian works.§ Jewish literature furnishes similar evidences. Lazarus Goldschmidt just recently manufactured a Midrash ascribed to one Arzilai bar Bargilai, a transposition of his own name, Eliezer ben Gabriel. As if it were to make atonement, the same gentleman in his edition of the Book of Creation is willing to ascribe this theosophical production of the ninth century to R. Akiba's age.|| It is said that the disciples of Eliah Wilna, the Gaon, showed their appreciation of the master by publishing posthumous works which they had fabricated themselves.** Isaac Samuel Reggio is not entirely free from the suspicion that he has written the severe attacks on rabbinical Judaism which are commonly attributed to Leon Modena.†† The most audacious attempt to use a celebrated name in order to lend importance to an inferior work of literature, is the bold forgery of Zohar, the author of which, Mose di Leon, ascribed his work to R. Simeon ben Yo'haj,‡‡ and in

**La vie inconnue de Jesus Christ*, Paris, 1894. This impudent forgery has already been exposed by Max Mueller right after its publication (Nineteenth Century, 1894, II, 515) and recently (ib., Apr., 1896. p. 667) he proved that all of N.'s statements, how he came into possession of this rare manuscript, are simply lies. It gives me satisfaction that I discredited the whole story before Max Mueller's article appeared. (Deborah, Aug. 30, 1894.)

†*Privilegium majus*, literature on this subject in Krones: *Grundriss d. Oest. Geschichte*, p. 361.

‡Doellinger: *Die Papstfabeln des Mittelalters*, 1863.

§Steinschneider. *Die hebr. Uebersetzungen* p. 229.

||*Das Buch d. Schöpfung*, Frkf. 1894, p. 12.

**Kayserling *Die juedische Literatur* p. 36.

††N. S. Libowitz recently in his book *R. Jeh. Arjeh Modena*, Vienna, 1896. p. 42 ff. discussed the question of the genuineness of the two anti-rabbinical works ascribed to Leon Modena, and arrived at a positive result.

‡‡This forgery, already exposed by Abraham Zacuto (Jochasin ed. Filipowski, p. 95) and by Jacob Emden in his *מטפחת ספרים* is extensively treated by Graetz VII. 424. ff.

spite of an early discovery of this fraud there are thousands of Jews today who believe in its authenticity, which was defended by the reformer Moses Kunitz* and partly admitted even by such a critic as Jacob Emden, although he brought evidence that the author of the Zohar was familiar with the jargon of the Spanish Jews.† In the eighteenth century R. Saul Berlin had the impudence to manufacture a volume of Responsa attributed to R. Asher,‡ and even he found believers, and he might have escaped the wrath of the outraged rabbinical contemporaries, had he not had the impudence to put into the mouth of R. Asher utterances savoring of a religious liberalism which was highly offensive to the orthodox. We know of many books attributed to Maimonides of which the latter is entirely innocent.§ The age of the Geonim was very prolific in the production of Kabbalistic works attributed mostly to authorities of the second century, and sometimes even to Patriarchs. At the same period compilations of Homilies were published, which were attributed to Talmudic authorities of an early period, as to Rab, to R. Tan'huma, and to R. Kohana, although it needed not a great amount of criticism to discover that names and sayings are found in them which belong to a later period than the alleged author of the compilation.||

The two centuries preceding and the two centuries following the Christian era have produced such a mass of pseudo-epigraphic

*In his *יהא' בן* Vienna, 1815.

†Asnoga, the Portuguese jargon word for synagogue, is explained in the Zohar from *אש' נונה*. Still Emden begins his work with the profession that the Zohar is "holy of holies." It is interesting that Mendelssohn in his introduction to the Pentateuch accepts the testimony of Zohar in regard to the ancient testimony of the vowel points.

‡*בשמים ראש'* Azulai s. v. is willing to accept the testimony of Saul's father as evidence of the genuineness. Zunz: *Ritus* p. 226. Loew *Ges. Schr.* II. 183.

§Gratz VI. 389.

||See Zunz, G. V. 204, 245, Weiss II. 225; III. 252, Friedmann's and Buber's introductions to the works edited by them. I shall point here only to the fact that in *Pesiqtha d'Rab Kohana* ed. Buber, p. 188a f. we find the legend of the battle betw. *Levjathan* and *Behemoth* which is evidently a compilation of the two *Haggadas* in *B. Bathra* 74a f. and therefore this *Midrash* bears wrongly the name of R. Kohana.

literature that it would be an almost miraculous phenomenon, had the rabbinical literature escaped the contagion. In the year 164 B. C. a Jewish millenarian, impressed with the historical significance of the death of Antiochus Epiphanes, wrote a prophecy which he purported to have been written by Daniel according to the dictation of a heavenly messenger on the 25th of Nisan 555a Ch. and hidden in a sealed box on the banks of the Tigris until the time of the fulfillment.*

The Hellenistic party which had learned to respect the literature of the Greeks found its prophets amongst the celebrated names of the Greek literature. Aristobul who lived about the middle of the second century B. C. makes Orpheus the interpreter of Moses' laws.† Some time later an anonymous, who seems to have been an Alexandrian Jew, introduces the Roman Sibyl as prophecying that after the seventh king of the Ptolemies the Jews would reign over the whole world.‡ More modest in his aspirations is another Greek Jew who in the disguise of Sibyl predicts that a ruler whose name will be like the name of a sea (Hadrian) would rebuild the temple.§ The Christians profited by this example. The Sibyl who it seems had been converted to Christianity made a poem on Jesus with the acrostich Jesus, son of God, savior, cross.|| Similarly Christians interpolated the cross of Jesus into the Psalms, and his descent to hell into Jeremiah and were quite indignant when the Jews charged them with the forgery of these passages, retaliating that the Jews in the hardness of their hearts had expurged these passages.** Such a forgery of biblical writings was so common that R. Akiba condemned every one to hell who would read apocryphal books ספרים היצוניים,††

*The introductions to the O. T. fix the date of Daniel about 168 B. C. It seems to me evident that the author wrote under the impression of the hopes which the unexpected death of Antiochus (Dan 11, 45) produced amongst the Jews.

†See Zeller *Gesch. d. gr. Phil.* III, 2, 1.

‡Sibylline Oracles III. piece, verses 162-195.

§Sibylline Oracles, v. 247.

||VIII. 217. ff. cp. V. 256-259.

**Hilgenfeld: *Die alttest. Citate Justin's* in Zeller: *theol. Jahrb.* 1850, p. 399 ff.

††Synh. 90a.

and R. Gamaliel, another opponent of Christianity, would not allow the reading of a Greek translation of the Bible.*

When passages such as the story of Susan† were interpolated into the biblical books, and when some scribblers had the boldness to write a book of Enoch‡ in which this seventh descendant of Adam described his adventures in heaven, is it likely that just rabbinical laws should have remained immune from the epidemic forgery, which is so much the less probable, as partisan views and theological opinions such as inspired a writer of the second century§ to put his theosophic mystic views on the identity of Jesus with the Neo-Platonic Logos into the mouth of Jesus, always emphasizing the truth of his sayings, and the veracity of his witnesses, existed just as well amongst the Jews, and caused them to emphasize the Mosaic origin of certain rabbinical laws just as the author of the fourth gospel felt bound to make Jesus say, "All things that are mine are thine, and thine are mine."|| Therefore it is quite evident why R. Joshua said, that it was a tradition which could be traced in an uninterrupted chain to Moses that the prophet Elijah would not come to declare anything as clean or unclean, to expel or to take in, but to expel those who had been taken in by force and to take in those that had been expelled by force.** R. Joshua emphasizes the Pharisaean theory that the Messias could not abrogate the law while the Christians taught the contrary. In order to emphasize that the unchangeableness of the Mosaic law was a fundamental doctrine of Judaism he traced it back to Moses, just as the author of the fourth gospel traced his theology back to Jesus, and makes Jesus say, that Petrine Christianity should only be a transition to the true Johan-

*Sabbath 116a.

†In the apocryphal Daniel ed. Tischendorf, II, 480 ff.

‡Dillmann edited the Ethiopic text of Enoch 1851; an English translation by G. H. Schodde Andover 1882.

§The author of the fourth gospel.

||John 17, 10. It may not be out of place to point to the remarkable parallel in Aboth 5, 10, which declares this saying as characteristic of an עַם הָאֶרֶץ.

**Edujoth 8, 7.

neic Christianity.* Frankel omitted this "Mosaic tradition" in the enumeration of these traditions in his *Hodegetics*. As quite natural, apologetes built their dialectic card-houses on this omission, saying that Frankel intended to speak of real laws and not of haggadic sentences.† At all events he missed a vital point in the explanation of this rabbinical conception, as did I. H. Weiss, who in his first volume‡ explained R. Joshua's view to mean that the rabbis should have the right to decide questions of the law by a vote without waiting for a heavenly intervention, in the second volume partly admitted that it was anti-Christian.§

The two other laws which the Mishna calls Mosaic are one about the tithe in the land of Ammon and Moab;|| the second about a restriction in the application of the law to leave the corner of the field.** It is not quite clear why just these laws should be so emphasized, but it may be that both laws are humanitarian enlargements of the Mosaic injunction: at all events they are not Mosaic as even Lipmann Heller admitted;†† consequently they belong to the class of pseudo-traditions.

To these probabilities we may add several instances in which Talmudic authorities express a doubt, whether a certain rabbinical law is authentic or not **מֵאַן לִימָא לֵן דְּמִתְרַצְתָּא הִיא דִּילְמָא מִשְׁבַּשְׁתָּא** ‡‡ and although such doubt may have its origin in a dialectic, rather than in a historic conviction, as is the case when David Ha-Levi expresses his doubts concerning the genuineness of a decision rendered by Benjamin of Solnik,§§ still it is evident that false Halakhoth must have existed, which is so much the more certain as the same phrase is quoted by different authorities so that it must have been a proverbial expression.

*Joh 21, 21.

†Beer Z. d. m. G. 1861, p. 320; see Ben Chananjah 1861, p. 320.

‡p. 72, note.

§p. 88 **מכון מקצת נגדם**.

||Jadajm 4, 3.

**Peah 2, 6.

††In the passages quoted p.

‡‡Sabbath 121b; Pesachim 99b.

§§Ture Zahab 402, 9 **ולא אאמין שיצאו הדברים האלו מפי אותו הצדיק**.

Moreover Rabina towards the end of the fifth century lays down the rule that if a law is self-contradictory **כיוון דקשיא רישא חסיפא** it shall not be taught nor made the basis of practical decisions, but be left to the individual opinion of the rabbi,* and finally in some instances the Talmud clearly states that a certain law is wrongly attributed to Raphrem,† that Rabbi Abahu ascribed the permission to study Greek to R. Jochanan because he wished his own daughters to acquire the knowledge of Greek‡ and that a certain law was ascribed to R. Jose in order to give authority to it, because R. Jose was considered a man who deliberately weighed the reason for a law **אנימקו עמו**. It is therefore easily understood that, when the Talmud says, “He who reports a law in the name of him who originated it, brings salvation to the world,”|| it referred to those who attributed their own views to older authorities, for it is said in another place that he who reports a law in the name of one who did not originate it, causes the Shekinah to withdraw from Israel.** R. Eleazar bar Simeon says expressly: “Just as it is man’s duty to repeat what he has heard, i. e., to propagate true tradition, so it is his duty not to propagate false tradition.††

When the same R. Eleazar is quoted as saying to R. Jehuda Hanassi, “I have learned from my father more while standing, i. e., from occasional remarks, than you have learned, while sitting, i. e., in the regular course of instruction,” it is proven from the context, that an opinion ascribed by R. Jehuda Hanassi to R. Simeon is by the latter’s son regarded as apocryphal.‡‡

Aside from these indirect arguments we can bring positive statements to prove that intentionally certain opinions were put into the mouth of older authorities. Very frequently we find

*See on similar passages **יד מלאכי** § 216.

†K’rithoth 14a.

‡Jer. Peah I, 1.

§Erubin 51a.

||Aboth VI, 6; Megilla 15a see Abraham Guhmbinner O. Ch. 156.

**Berakhoth 27b.

††Jebamoth 65b.

‡‡Jer. Sabbath 10, 5; Weiss II, 185.

that later rabbis swear by God **האלהים אברה*** to emphasize the truth of their assertions that a certain older rabbi really had said what they quote in his name. Rabbi Zera rebukes some of his contemporaries with the words, "R. Isaac is still living and yet you put on him your rags."† Of the same R. Zera it is said that to him may be applied the scripture, "A faithful man who can find,"‡ because there were few like him who would be so careful in regard to the preservation of the correct tradition. Famous rabbis like R. Nahman were especially favored by forgers of tradition, and Rabba gives it as an often repeated warning, "Did I not say unto you, you should not hang empty cans upon R. Nachman.§ Although the details of this metaphor are not clear to us, the general idea is manifest. R. Nachman is a mighty tree and of one who would make himself conspicuous by the glory of another it is proverbially said, "He hangs himself on a high tree," and it is most probably this practice which prompts R. Akiba to say to his disciple, Simon ben Yochai, "If you wish to hang yourself, hang yourself on a high tree."||

There is another feature in the history of the rabbinical law that even in our Talmudic literature there is found frequently an expression of doubt regarding the author of a certain opinion **איהני** or regarding the opinion of a certain author **איכא** **דאמרי הכא אמר רבינא**†† Finally a great part of the contents of our Talmud has been added by the Saburaim and Geonim from the seventh century.‡‡ This fact is in many instances manifest to the

*Erubin 14b; Meg. 10a and frequently

†Jer. Maasser sheni I, 3.

‡Prov. 20, 6. Jer. Sabbath I, 2.

§Aboda Zara 37b.

||Pessachim 112a.

**Joma 26b, cp. Sabb. 63a: Said Abbaj to R. Dime, acc. to others Rab. Avja said it to R. Dime; acc. to others R. Joseph to R. D.; acc. to others R. Avja to R. Joseph; acc. to others Abaj to R. Joseph.

††Chullin 3b.

‡‡Mielziner Introd. p. 60; Weiss III. 93 and 220 ff.

careful reader by contradictions, by the difference in style, and by the interpolation of passages, which disturb the context.* This has been admitted as a fact even by the strict traditionalists of mediæval times; by R. Sherira Gaon, by Rashi, by the Tossaphists, by R. Abraham ben David, by R. Zerahja halevi, by R. Salomo ben Adret and many others,† and still criticism of the Talmudic text is only in its infancy, and greatly impeded by the lack of old manuscripts. Internal evidence will have to be weighed more than external evidence. Many passages of the Mishna may be of later origin.‡ Rabbi Jehuda who without a connection with the context makes a remark concerning Chanukka, may probably be the Babylonian Rab Jehuda who lived a century later and his remark a gloss on the text of the Mishna was by an overzealous copyist written in the text.§

*The first Mishna למה אמרו חכמים (Ber. 1, 1) shows an interpolation. Aboth 1, 5 shows two interpolations from different times באשתו אמרו and מכאן אמרו חכמים. As for the Talmud, it is evident that it consists of different strata, which just as those that form the crust of our globe are sometimes changing their places, the younger stratum breaking through the older and erratic granite blocks of ancient origin, finding their way to a place where they can only have been carried by a glacier, from a distant country. Without going into the details, it is quite evident that R. Ashe could not have written the words (B. mezia 86a): Rabina and R. Ashe are the final authorities in law, i. e., that later rabbis could only comment upon the decisions of older authorities סבר but could not lay down independent decisions הוראה, and less likely could he have found this fact indicated in the Psalms (73, 17) until I shall have come to אל מקדשי to Ashe the man of God and אבינה R. Abina לאהריתם then the law will have reached its final development. This pun, worthy of R. Moses Teitelbaum, who is credited with having discovered Kossuth's name in the Psalms (60, 6) is the product of a mystically inclined mind of the eighth or ninth century.

†The quotations in Weiss III. 221, ff.

‡The Talmud Joma 83b quotes a Mishna which as the whole tenor proves, cannot be a Mishna, and which acc. to a parallel passage Chullin 106a is a Palestinian adage. The whole quotation is acc. to Rabinowitz רקרוקי כופרים i. e. interpolated.

§Chanukka is only twice mentioned in the Mishna, and both times only *en passant*. We further see that only authorities of the time after the restoration of Parseeism by the victory of Artaxerxes over Artaban 226 are quoted in connection with this festival and that consequently the celebra-

This age of the Geonim was especially prolific in the production of works which sometimes by mistake, but in most instances, intentionally, were ascribed either to older Geonim or to Talmudic authorities or to biblical persons. R. Sherira Gaon in the tenth century expresses his firm belief that an opinion quoted in the name of Saadjah could never have emanated from such a prominent scholar who certainly would not have overlooked a clear statement in the Mishna.* The same doubt he expresses in regard to an opinion ascribed to R. Mathathia Gaon.† Two Geonim of the ninth century accused R. Jacob, one of their predecessors, to have used the celebrated name of R. Jehudaj as authority for his own views because his contemporaries would not have accepted it on R. Jacob's authority,‡ and R. Paltoj quite frankly advises his disciples to ascribe their opinions to older authorities if they thought they might meet with opposition, provided they were convinced their views were right.‡

The fabrication of books ascribed to Talmudic authorities was quite flourishing and especially the Kabbalists were masters in this branch of literature. R. Akiba was made responsible for a Kabbalistic work called **אותיות דרע**,§ in which R. Akiba is made the author of theosophical nonsense of which in his Talmudic sayings no trace can be detected. R. Ismael, the advocate of common-sense exegesis is made responsible for the mystic work **היכלות**,|| and R. Sherira Gaon defends the authenticity and the great value of

tion of Chanukka which after the destruction of the temple had altogether ceased was revived through the persecution of the Parsees who would not tolerate the light in these days of mourning. The Beth Shammai and Beth Hillel quoted in connection with Channuka are evidently apocryphal and taken from Massakhet Sopherim, a production of the seventh century. (Sabb. 21a ff.)

*Respp. Shaare Zedeq I. 3, 11.

†Ib. I. 8, 5.

‡Weiss II 54 from Chemdah Genuzah.

§Ed. by Jellinek. Beth Hamidrash III. 12-47.

||Ib. III. 83. ff.

such a nonsensical fabrication as *שיעור קומה*.* The haggadic literature shows the same tendency, and it was evidently a forger who wrote the *Pirke d' R. Eliezer*,† a Midrash full of theosophical ideas to which as a preamble he wrote a biographical sketch of R. Eliezer in a novelistic manner, and this fabrication of the ninth century was even by Maimonides accepted as an authentic work,‡ and he tried to rationalize on its eccentric exegetical experiments, as he rationalized on some haggadic statements of the Talmud, the most typical of which is to make of the thirteen mystic attributes of God thirteen dogmatic views.

Other talmudic authorities as R. Kohana and R. Tanchuma were made the authors of homiletical compilations belonging to this era, and the genuineness of their authorship is defended by a man of such stupendous scholarship like Buber, although it is evident for various reasons that the authors of these compilations knew already our Talmud.§ If we add that in those times a writer attributed his production to Sem, the son of Noa,|| and another one fabricated a book of Creation, which Saadjah, Sabbathai Donnolo and Jehuda ha-levi attributed to Abraham, while I. di Lattes and Gedaliah ibn Jachja ascribed it to R. Akiba and Lazarus Goldschmidt** is generous enough to leave the question about the author undecided, yet assigns it to an anonymous who

*See on this curious piece of literature Bloch "Gesch. d. Entw. d. Kabb.," p. 14. ff. His view that the blasphemous anthropomorphisms of this book are pedagogic devices to give children an idea of space, is not preferable to that of Gratz, who considers it a protest against philosophical ideas about God. The defense of Sherira may be forged.

†See Zunz G. V. p. 283.

‡Moreh II. 26 Zunz l. c. 290 seems to believe that Maimonides, because he speaks of the Midrash "known as that of Eliezer," did not accept it as genuine. The correction of N. Bruell in the second edition of G. V. is no improvement. Bruell proposes to read instead of Maimonides *Zacuto* Jachasin p. 52b, but in that place there is no mention of Eliezer, while p. 56b *Zacuto* expresses his belief that *Pirke d. R. E.* are genuine.

||Orient 1851, p. 371.

§Tanchuma according to Buber is not the direct work of this Rabbi, although based on his homilies, while *Pesiqtha* is the work of R. Kohana.

**See Goldschmidt: *Das Buch der Schöpfung*, S. 29, ff.

lived in the second century, it becomes evident that the genuineness of Talmudic texts as we possess them, is highly questionable. We may therefore safely say that tradition as authentic interpretation of the Mosaic law is an illusion, because:

I. The Thora never mentions the existence of an oral law.

II. It directly regards the written law as sufficient.

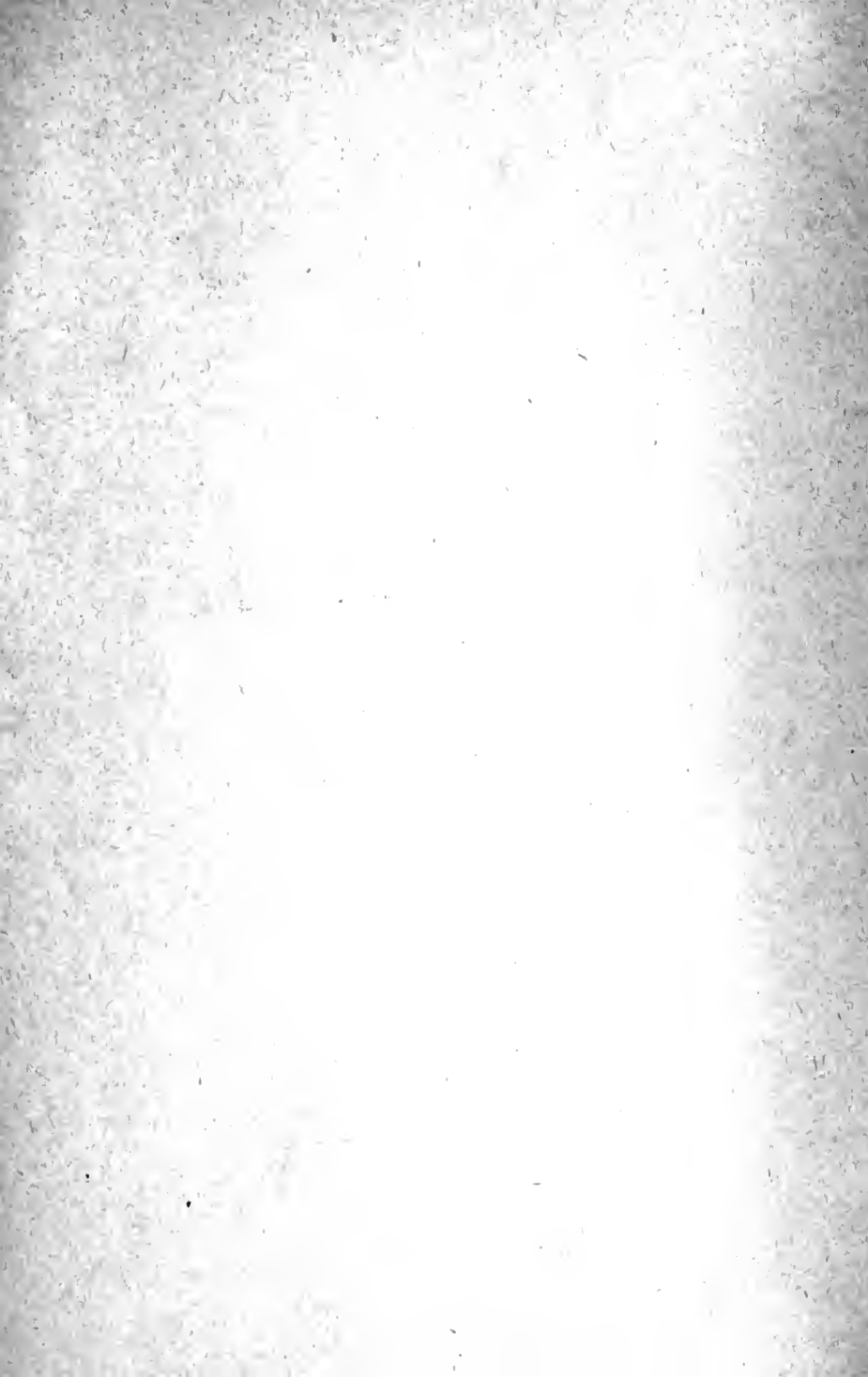
III. The authenticity of the rabbinical law presupposes the Mosaic authorship of the whole Pentateuch.

IV. It presupposes the existence of the great synagogue which can not be proven from historical facts.

V. Some of the rabbinical laws are erroneous interpretations of scriptural commandments.

VI. A considerable part of our rabbinical literature is pseudo-epigraphic.





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